IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITON NO. 5315 OF 2005

Mr.Manubhai Harvondas Patel, Indian Inhabitant, Aged about 51 years, carrying on business from the office situated at 5, Shreepal Industrial Premises,Pavan Baug Road,Malad (West) Mumbai -400 064 and residing at 2201 Kingston Palace, Chincholi bunder road, Malad (W), Mumbai - 400 064. ..Petitioner.

V/s.

1) Income Tax Appellate Tribunal at Mumbai, Central Government Offices Building, 4th Floor, 101, Maharashi Karve Road, Mumbai - 400 020.

2) The Union of India through its The Chief Commissioner of Income Tax, Mumbai Aayakar Bhavan, Room No.358, M.K. Road, Mumbai - 400 020. ..Respondents.

Petitioner in person.

Mr.Parag Vyas for respondents.

CORAM : V.C. DAGA AND J.P.DEVADHAR, JJ.

DATED : 16TH AUGUST, 2005.

ORAL JUDGMENT (PER V.C.DAGA, J.)

1. Heard the petitioner appearing in person and the learned counsel for the respondents. By this petition, the petitioner is seeking refund of

Rs.8,23,999/- plus Rs.17, 03,704/- along with interest thereon and also praying for directions to respondent No.1 to hear the Appeal No.2301/Mum/2004 on merits within fixed time schedule. So far as the appeal No.2301/Mum/2004 filed by the present petitioner is concerned, the same has already been decided by the Tribunal on 18th February, 2005 as such, no directions for expeditious disposal of appeal are necessary. The operative part of the appellate order reads as under:-

> " On the facts brought on record, we are remanding the matter back to the file of AO for fresh adjudication of the issues. We also make it clear that the facts brought by the assessee on record with which we also agree that some of the papers which were already in the hands of AO were not brought to the notice of JCIT, appears to be correct. Since we remand the matter back to the file of AO, we are not going into the merits of the appeal. With the above observations, we set aside the impugned orders and restore it to the file of AO."

2. The aforesaid order disposing of the appeal unequivocally makes it clear that the matter has been remanded back to the assessing officer for fresh adjudication of issues raised by the assessee. Accordingly, notice has already been issued by the assessing officer to the petitioner which petitioner admits to have received.

3. So far as the prayer for refund of the amount with interest referred to hereinabove is

concerned, the same cannot be granted unless the assessment proceeding is terminated in accordance with law,. Consequently, both the prayers i.e. prayer clause (A) & (B) has no merit. So far as the prayer (C) is concerned, we do not find any case being made out by the petitioner to grant such relief. Prayer clause (C) seeking directions to C.B.I. to register case under officers of the respondents under the Indian Penal Code is, therefore, rejected as unwarranted. The petition is without any merits.

4. During the course of hearing it transpired that the assessment proceeding which needs expeditious disposal is still pending with the assessing officer. The assessing officer is thus directed to proceed with the same and complete it within a period of 3 months from the date of receipt of a copy of this order.

5. We hope that the petitioner will co-operate with the assessing officer in completing the assessment. In the event the assessing officer finds that the petitioner is not co-operating, then it would be open for him to complete the assessment in accordance with law.

6. Petition, accordingly stands dismissed in limini with no order as to costs.

(V.C. DAGA, J.)

(J.P.DEVADHAR, J.)